IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10336 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIYARAM MUNESHWAR MALI

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN P JASANI for Petitioner

Respondent No.1 stands deleted by the Court's order dated 24.1.2000.

Mr.Digant P. Joshi, ASSTT. GOVERNMENT PLEADER for Respondent No. 2

MS MITA S PANCHAL for Respondent No. 3, 4

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 06/04/2000

ORAL JUDGEMENT :

Rule. Ms.Panchal for respondents nos.3 and 4 and Mr.Joshi for respondent no.2 waive service of the rule.

2. With the consent of the parties, the matter is taken up for final disposal.

3. The petition is filed by the petitioner who was appointed as Gardner on 1.8.1967. At the time of his entering into the service he had given his date of birth to be 1.6.1940 (first June nineteen forty). Thereafter the petitioner was also sent to Medical Officer, for determination of his age and the Medical Officer, Mansa had issued a certificate dated 29.9.1975 wherein it was stated that the age of the petitioner is 35 years. That means the petitioner was 35 years old in 1975. Therefore, his date of birth, i.e. 1.6.1940 given at the time of entry in service tallied with Medical Officer's certificate. Present proceedings are required to be initiated only because the petitioner was not only surprised but also shocked when he received Office Order dated 30.8.1999, whereby the petitioner was retired with effect from 1.8.1992. The reason for being shocked of the petitioner is obvious that by order dated 30.8.1999, the petitioner is sought to be retired with effect from 1.8.1992. The petitioner approached this Court by way of this petition. This Court issued notice on 27.12.1999 making it returnable on 24.1.2000. It was ordered on that day that respondent no.1 shall on the returnable date produce copy of the medical report dated 29.9.1975 referred to in the impugned order dated 30.8.1999.

4. When the matter came up for hearing on 6.3.2000, it was found from the record that the respondent no.2, Collector was served on 5.1.2000. But Mr.Digant P. Joshi, learned AGP submitted that he has no instructions from the Collector. Not only that, respondent no.4, Chief Officer, Mansa Municipal Borough was also served, but still the copy of medical report dated 29.9.1975 referred to in the impugned order dated 30.8.1999 was not produced. Therefore, this Court passed an order on 6.3.2000 to the effect that respondent no.4 shall supply copies of the documents referred to in para 5 of the petition within 10 days from the receipt of order. When the matter came up for further hearing on 29.3.2000, it was learnt that respondent no.4 had not complied with the order passed by this Court. Hence on 29.3.2000 an order was passed that, "the Chief Officer, Mansa Nagar Palika shall remain personally present before this Court on 5.4.2000". Yesterday, the Chief Officer, Mansa Nagar Palika remained personally present. Ms.Panchal for respondents nos.3 and 4 requested that some time may be granted to place the facts on record in the form of an affidavit. The matter was adjourned for today. Today, Ms.Panchal has filed an affidavit in reply on behalf of

respondent no.4.

5. Taking into consideration the averments made in paragraphs nos.1 and 2, the said affidavit is accepted and unconditional apology which is tendered by respondent no.4 is also accepted. So far as the relief as prayed for by the petitioner is concerned in para 4 of the affidavit in reply the facts and circumstances in which the impugned order came to be passed, are specifically mentioned, though it is not warranted in the facts of this case, but in the interest of justice a lenient view is taken in the matter and in the light of the fact that the present Chief Officer, Nagar Palika was not the officer concerned when the impugned order came to be passed, and in view of the unconditional apology tendered by the present respondent no.4, which is accepted, this petition is disposed of with the following order :

6. The order at Annexure 'B' dated 30.8.1999 is held to be illegal and the same is quashed and set aside. The petitioner is directed to be reinstated in service from the date his service came to be terminated, i.e. 1.10.1999 as Mr.Jasani, learned counsel for the petitioner submits that after the aforesaid order dated 30.8.1999 came to be served to the petitioner, the petitioner was not allowed to discharge his duties from 1.10.1999. Respondents nos. 3 and 4 are further directed to treat the petitioner in service for the period from 1.10.1999 till he is allowed to resume duties. Respondents nos.3 and 4 are further directed to pay the petitioner the unpaid salary for the entire period for which the petitioner is not paid. Mr.Jasani, at this point requests that the amount of salary which the petitioner was otherwise entitled to and which was his legitimate right, which is illegally withheld by respondents nos.3 and 4, may be directed to be paid interest. There is substance in the submission of Mr.Jasani, but looking to the fact that the present Chief Officer was not holding the post of Chief Officer at the time when impugned order came to be passed this Court does not feel it proper to impose interest on the amount payable to the petitioner. However, looking to the special facts and circumstances of the case it will be just and proper that respondents nos.3 and 4 shall pay a cost of Rs.2500/-(Rs.two thousand and five hundred only) to the petitioner along with the unpaid salary.

7. Respondents nos.3 and 4 shall allow the petitioner to resume duties with immediate effect and the payment of salaries unpaid shall be made on or before 31.5.2000. Respondents nos.3 and 4 shall also undertake

all the necessary formalities of getting approval from the Director of Municipalities pursuant to this order which may be required under the provisions of law.

8. The petition is allowed. Rule is made absolute with the aforesaid order of cost of Rs.2500/- (Rs.two thousand and five hundred only) to be paid by respondents nos.3 and 4. Direct service is permitted.

(Ravi R. Tripathi, J.)

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